

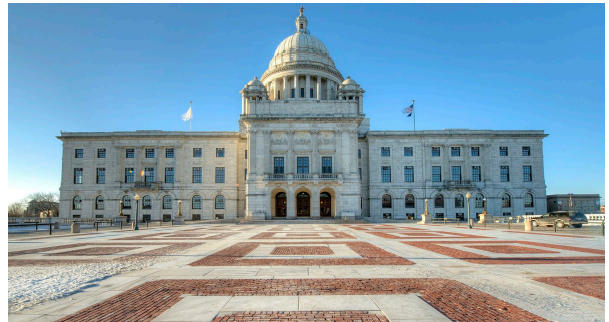
THE NEWSLETTER OF THE ACLU FOUNDATION OF RI

2022 LEGISLATIVE SESSION REVIEW:
VOTING RIGHTS, IMMIGRANT RIGHTS, DRUG REFORM MOVE FORWARD;
POLICE REFORM AND ABORTION INITIATIVES STALL

With the books closed on the 2022 General Assembly session, there are some very positive accomplishments to report.

After years of roadblocks, the legislature approved the legalization of marijuana and also passed legislation authorizing undocumented immigrants to qualify for drivers' licenses. In addition, the General Assembly approved an omnibus voting reform bill that eliminates burdensome mail ballot procedures that

took the Affiliate to the U.S. Supreme Court in 2020. The ACLU was also successful in helping to kill numerous anti-civil liberties bills on a wide range of topics, and there were only a few dubious, but not overly damaging, pieces of legislation that made their way to the Governor's desk.



Instead, our major civil liberties losses this session involved legislation that didn't pass. In a repeat from last year, and notwithstanding continued protests fueled by egregious acts of police misconduct, the General Assembly took no action on legislation to repeal or revise the Law Enforcement Officer Bill of Rights, failed to reinstate a law requiring the collection and analysis for racial disparities of demographic data from police stops and searches of vehicles, and allowed numerous other bills promoting police reform to die in committee. Separately, the General Assembly took no action on a bill to repeal abortion coverage bans for Medicaid recipients and state employees, notwithstanding legislators' knowledge that *Roe v. Wade* was on life support.

In this newsletter, you can read about these and some of the other 339 bills that the ACLU of RI lobbied on this year. For more information on our legislative advocacy, including access to our written testimony on dozens of bills, visit www.riaclu.org/legislation.

We also invite you to attend our annual legislative wrap-up – via Zoom – on **Wednesday, August 10th**. You can find details on how to sign up for the event on the back of this newsletter.

SCOTUS AND RHODE ISLAND

The recently completed U.S. Supreme Court term was the most conservative in a century, as President Trump's three nominees exercised their newfound power to turn the law radically to the right.

How will Rhode Islanders be affected? For our take on a few relevant cases, turn to Page 6.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

At the printing of our previous newsletter, a shocking leak from the U.S. Supreme Court had only just indicated that SCOTUS was poised to overturn one of the core constitutional rights that the ACLU has vigilantly defended for decades. Now we stand on the other side of that decision in a society where, not only has *Roe v. Wade* been overturned, but other decisions from the 2022 SCOTUS term have eroded critical tenets of the separation of church and state and basic due process rights.

We often emphasize the importance of local action and local politics. Despite the devastating news from SCOTUS this term, nothing illustrates the importance of such advocacy more than the significant wins that Rhode Island experienced in the Statehouse this session, including voting reform, the legalization of recreational marijuana and the passage of legislation allowing undocumented immigrants to apply for and obtain driving privilege cards.

The dismantling of constitutional rights may feel constant and unstoppable at the federal level. Yet, celebrating these local wins has never been more crucial, and our unwavering commitment to the continued protection of key civil liberties has not faltered in the face of these challenges. Indeed, it only strengthens our belief in the essential role we can all play at the state and local level.

As you read through the many legislative wins – and opportunities for future sessions – contained within this newsletter, we would like to sincerely thank you for your support of our work as we continue to fight for these critical rights for all Rhode Islanders.

--Steven Brown

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DRUG REFORM

Legalization of Recreational Marijuana (H 7593A as amended, S 2430A as amended) – PASSED 👍

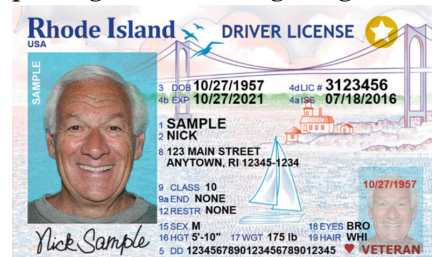
In an important victory for privacy and social justice, Rhode Island became the 19th state to legalize recreational marijuana. The ACLU submitted detailed legislation on this omnibus bill, with a number of our concerns addressed in the bill's final version. The new law contains slots for sale and cultivation licenses to go to "social equity" applicants; establishes an automatic expungement process for past marijuana possession convictions; and protects parents from adverse action in family court proceedings due to their lawful use of marijuana. Although not as strong as the ACLU had pressed for, the bill also generally protects employees from discipline for off-hours cannabis use.

The legislation left unresolved two major issues, however: whether police can search vehicles based solely on the presence of marijuana odor, and the validity of using "drug recognition experts" (DRE) to determine if a person was driving under the influence of marijuana. The ACLU considers DRE to be junk science that will lead to unjust convictions. We will continue to push for reforms to the law as its impact becomes clearer.

IMMIGRANTS' RIGHTS

Drivers' Licenses for All (H 7939A, S 2006A) – PASSED 👍

The ACLU and immigrants' rights advocates celebrated the passage of a law giving undocumented individuals access to



drivers' licenses, making our roads safer and reducing the fears of immigrants needing to get to work, school, the doctor, and elsewhere. Sponsored by Reps. Karen Alzate and Anastasia Williams and Sen. Frank Ciccone, the bill had

been debated for almost two decades before finally becoming law.

"364 Day Misdemeanor" (H 7355, S 2637) – DIED IN HOUSE 🙏

For individuals with green cards, a minor misdemeanor charge can have a severe and overly punitive impact. Because these crimes are punishable by up to a year in prison, people who don't spend a day in jail are still subject to detention under a federal law that authorizes deportation for conviction of an offense that carries a potential sentence of one year or more. This bill would decrease the maximum sentence for a misdemeanor by one day – to 364 days – to ensure such harsh consequences don't flow from a minor offense. The bill, sponsored in the Senate by Sen. Michael McCaffrey, passed that chamber but died in the House. The House bill sponsor was Rep. Leonela Felix.

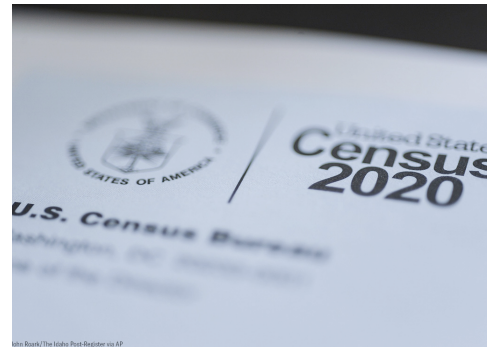
VOTING RIGHTS

“Let RI Vote” Act (H 7100A, S 2007A) - PASSED 👍

Following 2020’s extraordinary voter turnout after the emergency implementation of early in-person voting and less burdensome mail ballot procedures in response to the pandemic, comprehensive legislation to permanently codify these procedures passed. Among other things, the legislation eliminates the onerous requirement, which the Affiliate successfully challenged in the U.S. Supreme Court, that mail ballots be witnessed by two people or a notary. The legislation also establishes a multilingual voter information hotline and requires every municipality to have at least one mail ballot dropbox. The legislation was sponsored by Sen. Dawn Euer and Rep. Katherine Kazarian, and will be in effect for this year’s elections.

Prison Gerrymandering (H 7323A as amended, S 2162 A as amended) - PASSED 👍

Throughout the redistricting process – in which legislative districts are redrawn in Rhode Island every ten years – the ACLU pressed lawmakers on the need to simultaneously address the problem of “prison gerrymandering,” the practice of counting incarcerated individuals at the ACI as residents of Cranston rather than their home districts, even when they are required to vote from their home address. For the first time, the state’s redistricting commission recognized the equity concerns underlying this issue and reallocated approximately 41% of the incarcerated population – specifically individuals who were serving sentences of two years or less – back to their home communities. Next year, we will continue our push for legislation to completely bar this practice for the next reapportionment in 2030.



REPRODUCTIVE FREEDOM

Medicaid Funding for Abortion (H 7442, S 2549) - DIED IN COMMITTEE 👎



Made especially critical by the recent overturning of *Roe v. Wade*, this legislation would have provided Medicaid coverage for abortions and also ensured that state employee health insurance provides coverage for the procedure, two bans currently codified in state law. These restrictions on abortion coverage disproportionately impact low-income individuals, people of color, and younger people. Repealing the two laws at issue, which have been on the books for decades, would provide necessary support for a patient’s decision-making over their health and well-being. Sponsored by Sen. Bridget

Valverde and Rep. Liana Cassar, the legislation died in committee in both chambers without a vote. Reproductive freedom advocates are hopeful for a more positive response to the bill in 2023.

DUE PROCESS

Hotel Ejection of Guests (H 7910A, S 2511A as amended) - PASSED 👎

On a 37-33 vote, the House of Representatives retained language in this bill promoted by the RI Hospitality Association that will allow hotels to summarily eject patrons who direct “offensive” or “demeaning” comments at other guests or employees. The ACLU and a number of other groups raised concerns about the bill’s broad wording and the inevitable prospect of this power being discriminatorily enforced, but Rep. Edith Ajello’s attempt to strike it from the legislation was narrowly defeated. The ACLU will be monitoring enforcement of the new law to see how it is implemented.

Outpatient Civil Commitment Standards (H 7668, S 2762) - DIED IN SENATE 👍

This legislation would have allowed Advanced Practice Registered Nurses (APRN) to attest to a patient's mental health condition and participate in certifying patients for mandated outpatient treatment, a serious infringement on liberty which is presently something that only doctors can authorize. Although we acknowledged the important role that APRNs play in the mental health field, we argued that when it comes to medical recommendations for involuntary treatment, patients are stripped of critical elements of due process when the decision is in the hands of anyone but those of a physician, who are the only professionals that can decertify such treatment. While this legislation passed the House, it did not receive a vote in the Senate and died.

STUDENTS' RIGHTS

School Discipline Reform (H 7162, S 2289) - DIED IN COMMITTEE 👎

Despite the passage of legislation in 2016 designed to reduce out-of-school suspensions, their use has not significantly decreased, nor have the disparities in how the penalty is meted out to students of color and those with disabilities. This bill would have strengthened that law by banning out-of-school suspensions for K-5 students except in extremely limited instances, and by requiring school districts to submit annual reports documenting their strategies to mitigate disciplinary disparities based on race or disability. The bill, sponsored by Sen. Ana Quezada and Rep. Grace Diaz, died in committee in both chambers. The ACLU will be back next year to promote its passage, and we expect to have additional data to present that will further demonstrate the crucial need for the legislation.

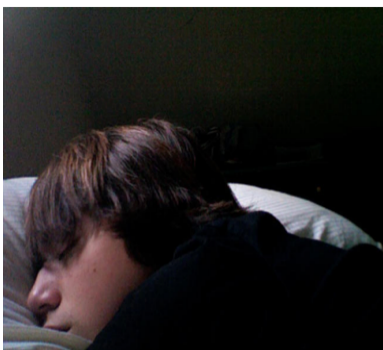
Increased School Police Presence (H 8310) - DIED IN COMMITTEE 👍

In response to the Uvalde school shooting at the end of May, a handful of bills were rapidly introduced in the final weeks of session which sought to increase school security and police presence in a number of inappropriate ways. This particular piece of legislation, for example, would have required that two school resource officers (SRO) be placed in every K-12 public school in the state. The ACLU and other student advocacy groups opposed the legislation, noting that SROs often turn normal adolescent behaviors into issues of criminal justice, and that their ubiquitous presence could exacerbate the disparities in enforcement protocols that are seen in suspension data for students of color and students with disabilities. The ACLU presently has two major lawsuits pending on behalf of students who were victims of SRO misconduct. The bill, along with similar ones, died in committee.



A video still from an incident where an SRO tackled a student at Narragansett High School. The incident is currently at the center of an ACLU of RI lawsuit.

School Computer Privacy (H 7563) - DIED IN SENATE 👎



Distributing computers to students in public schools for home use is now commonplace. Unfortunately, students have virtually no privacy protections when they use these computers. This legislation would have greatly limited remote access to the computers by school officials. The bill, sponsored by Sen. James Seveney and Rep. June Speakman, passed the House but died in Senate committee. If this seems like an abstract issue, consider the photo to the left. It is a screenshot of a student in his bed captured by Pennsylvania school officials from a school-loaned laptop; the school district's snooping led to a major ACLU privacy lawsuit.

RACIAL JUSTICE

Social Worker Exam Requirement Repeal (H 7396A, S 2617A) – PASSED 👍

We strongly supported this legislation that imposes a moratorium on a requirement that an applicant to become a licensed clinical social worker pass a standardized written test to obtain a license. The ACLU and professors from RIC's School of Social Work noted that this standardized testing does not in any way measure professional competency but does have a significant racially discriminatory impact that depresses the number of students of color who are able to enter this important field. Despite strong opposition to the bill from the national testing company that has a substantial financial stake in seeing the tests serve as a licensing qualification, the General Assembly approved a three-year moratorium on the requirement in legislation sponsored by Sen. Alana DiMario and Rep. Mary Ann Shallcross Smith.

PRIVACY

Mental Health Records Disclosure (H 7669Aam) – DIED IN SENATE 👍

We opposed legislation sponsored by BHDDH, the state's mental health agency, that would have greatly expanded the circumstances for the nonconsensual disclosure of mental health records to third parties. Joined by other advocates, including the state's Mental Health Advocate, we noted that the confidentiality of mental health information represents a deeply important privacy interest and the state had failed to make a case for breaching it in the ways this bill did. While the legislation passed the House, it died in the Senate.

MISSED OPPORTUNITY – POLICE REFORM

Ever since the Black Lives Matter protests of 2020 ignited by the death of George Floyd, state legislatures across the country have enacted a wide variety of police reform legislation. Not so in Rhode Island, unfortunately. One of the greatest disappointments of the 2022 session was the missed opportunity, for the third year in a row, for legislators to take any action on bills designed to rein in questionable law enforcement practices. Among the police reform bills that died:

- Legislation reinstating the collection and analysis of data relating to police traffic stops, designed to determine if patterns of racial profiling could be found. (H 7711, S 2913)
- Legislation to set limits on the police use of invasive surveillance camera technology. (H 7507, S 2650)
- Legislation reforming the Law Enforcement Officers' Bill of Rights, which serves as a significant barrier to disciplining police officers for misconduct. (S 2380, S 2178, S 2799)
- Legislation to require parental notification and involvement before the questioning of a juvenile by law enforcement. (H 7188, S 2370)

2022
LEGISLATIVE
SCORECARD



Are you curious how your Reps. and Senators voted on some key bills during the 2021-2022 legislative session (as well as earlier sessions)? If so, you can find information at:

www.riaclu.org/legislative-scorecards

WHAT DOES THE U.S. SUPREME COURT'S RECENT TERM MEAN FOR RHODE ISLANDERS?

According to a *New York Times* analysis, the recently completed U.S. Supreme Court term was the most conservative in a century. In the last few weeks of the term, this new supercharged conservative majority literally rewrote the book on constitutional law. What does it mean for Rhode Islanders? Three cases in particular are worth noting.

Dobbs v. Jackson Women's Health Organization. In overturning *Roe v. Wade*, the Supreme Court has opened a minefield. On the one hand, the Rhode Island legislature's prescient codification of the *Roe* standards into state law in 2019 ensures that, at least for now, the right to an abortion remains safe in Rhode Island. But there is still cause for concern. For instance, does the *Dobbs* decision give Congress the authority to ban abortion nationwide, including in states with protective laws like our Reproductive Privacy Act? Can other states pass laws making Rhode Island healthcare providers liable for offering abortion services to out-of-state patients, either in-person or via telemedicine? In the coming months, we will be working to determine whether Rhode Island needs to consider passing additional legislation to preserve what should be a constitutionally guaranteed fundamental privacy right.

Kennedy v. Bremerton School District. June 24, 2022 marked the 30th anniversary of the U.S. Supreme Court's seminal decision in *Lee v. Weisman*, the ACLU of Rhode Island's successful challenge to the Providence school district's practice of having prayers at graduation ceremonies. In a 5-4 decision, Justice Anthony Kennedy noted: "One timeless lesson [of the First Amendment] is that if citizens are subjected to state sponsored religious exercises, the State disavows its own duty to guard and respect that sphere of inviolable conscience and belief which is the mark of a free people."

Just three days after that anniversary, however, a new 6-3 majority of the Court severely undermined that lesson by siding with a public school football coach who demanded the right to pray after games at the 50-yard-line. While the ruling did not directly overrule the *Weisman* case, it discarded the legal test that had been used for decades to decide whether government practices violated the First Amendment's Establishment Clause. The decision will require renewed vigilance by our Affiliate to prevent this major crack in the wall separating church and state - Roger Williams' crowning achievement - from spreading.



Plaintiffs Dan Weisman and his daughter Debbie speak to reporters on the steps of the U.S. Supreme Court in 1991.

Carson v. Makin. In this case, the Court ruled that the state of Maine was constitutionally compelled to use taxpayer funds to support private religious schools, even where they engage in indoctrination, as long as the state supported private secular schools. The decision – which turns the religion clauses on their head by mandating official support of religious indoctrination – will affect actions the Affiliate has taken in the past when Rhode Island has provided, or considered providing, various forms of financial aid to religious schools.

Despite these troubling rulings, the ACLU of Rhode Island will continue to vigorously fight for the right to privacy and reproductive freedom, and for the First Amendment rights that the *Kennedy* and *Carson* cases have thrown into disarray.

LEGAL BRIEFS

ACLU Suit Reveals Name of “John Doe” Trooper Fired for Intoxication

Representing the Black Lives Matter RI PAC and the community advocacy group Direct Action for Rights and Equality, the ACLU foiled a former state trooper’s attempt to proceed anonymously in suing the State Police after he was fired for allegedly not reporting to work one day because he was too intoxicated.

ACLU of RI cooperating attorney Jared Goldstein filed a motion in Superior Court seeking to have the court either dismiss the lawsuit or require the trooper to include his name in the court papers. Goldstein argued that “the presumption against allowing a litigant to proceed under a pseudonym applies especially strongly against a public official when he chooses to file suit in court over a matter involving official misconduct and government operations.” Only a few days after the ACLU filed the motion, the trooper’s attorney agreed to proceed with the lawsuit in the name of the trooper, Jason Lawton.

ACLU Sues Company for Firing Recently Hired Pregnant Employee

In a case that highlights the difficulties and discrimination that women continue to face in the workplace, the ACLU of RI has sued a professional cleaning service that terminated a just-hired employee after learning she was pregnant. The lawsuit, filed by ACLU of RI cooperating attorney Mark Gagliardi, challenges the company’s violation of the state’s Civil Rights Act on behalf of Bristol resident Julia Schultz.

“In a setting where women are expected to do it all, it’s absolutely wrong that any woman should be shamed and prevented from doing what she needs to do for her child.”

~Julia Schultz, plaintiff

Schultz applied for a house cleaner position with Merry Maids business. At the time of her interview with the company manager, Schultz was 16 weeks pregnant, and she wore a baggy dress that concealed her pregnancy. Less than a week later, she was offered the position and received a welcome packet. When she went to an orientation program for new hires where her pregnancy was evident, the manager told Schultz that she couldn’t offer her the job “because of the physical demands,” and that she could reapply after the birth of the baby. In filing the suit, Schultz said: “When I left the building that day, I felt so ashamed, like I was doing something wrong by trying to work while pregnant. In a setting where women are expected to do it all, it’s wrong that any woman should be shamed and prevented from doing what she needs to do for her child.”

Court Rules in Favor of English Language Learning Students

A Superior Court judge has ruled that the state Department of Education violated the rights of English Language Learning (EL) students by providing them less support than the law requires.

The dispute dates back to 2016 when R.I. Legal Services and the ACLU complained to RIDE that English Learning children in Providence had been provided with few or no direct services by certified EL teachers as required by state regulations, and that the services provided to EL children with disabilities were even less adequate. RILS attorney Veronika Kot and ACLU cooperating attorney Ellen Saideman sued after the state refused to correct the deficiencies.

In June, Superior Court Judge Netti Vogel agreed that the school district had “violated the clear and unambiguous language” of state regulations by “fail[ing] to respect the rights of ELs to receive special education so as to ensure that the students’ educational needs are met on a basis equal to that provided to other students.” She ordered the Department to determine the compensatory services the students were owed.

ACLU
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Wednesday, August 10, 2022, 6:00 PM - via ZOOM

WHAT: Our Annual Legislative Wrap-Up

WHEN: Wednesday, August 10, 2022, 6:00 PM - via ZOOM

WHO: Learn more from RI legislators and ACLU of RI lobbyists about how civil liberties fared in the 2022 session.

To register for this free Zoom event, visit <https://riaclu.org/events/2022-legislative-wrap>

Weeks in the 2022 Legislative Session: 24

Bills we tracked: 981

Bills we lobbied on: 339

PLEASE DONATE TODAY. HERE'S HOW:

MAIL A DONATION

Use the return envelope in this newsletter to mail a check made out to "ACLU Foundation of RI." Your donation is tax-deductible, and you don't even need a stamp!

MAKE A GIFT ONLINE

Visit www.riaclu.org/donate to make a one-time gift or set up a recurring donation.